

IN THE MATTER OF	:	BEFORE THE
<b>FRANK J. KIPPENBROCK</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-004V

.....

### **DECISION AND ORDER**

On March 20 and April 17, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Frank J. Kippenbrock, Petitioner, for a variance to reduce the 7.5-foot side setback to 1 foot for the construction of an addition in an R-SC (Residential – Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Frank J. Kippenbrock testified in support of the petition. No one testified in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property, known as 6605 Meadowfield Court, which is located in the 1<sup>st</sup> Election District at the southern terminus of Meadowfield Court in Elkridge (the “Property”). The Property is referenced on Tax Map 37, Block 16 as Parcel 301, Lot 474.

2. The Property is roughly rectangular in shape with a pipestem at the southern end connecting it to the cul-de-sac of Meadowfield Court. The lot consists of about 10,599 square feet in area. The main portion of the Property is about 150 feet deep and 63 feet wide.

The Property is improved with a two-story, single-family detached dwelling that is about 42 feet wide and 37.5 feet deep. The house is located about 10 feet from the north side lot line, 9 feet from the south side lot line, and 75 feet from the rear lot line. Access to the Property is gained via a paved driveway that runs from Meadowfield Court to an attached garage on the north side of the house. The topography of the Property slopes down on the south side.

3. The Petitioner proposes to construct an addition onto the south side of the house that will be 9 feet wide and 30.5 feet deep. The purpose of the addition is to enlarge the dining room, living room and kitchen, which are situated on the south side of the house. The addition will be constructed of materials that will match the existing home. When constructed, the addition be situated about one foot from the south side lot line, resulting in an encroachment of about 6.5 feet into the 7.5-foot side setback required by Section 110.D.4.d(1)(b)(i).

4. Vicinal properties are also zoned R-SC and are residential lots improved with single-family homes in the Willowood subdivision. According to the subdivision plats (Exhibits 1 and 2), the Property is one of the largest in size in the subdivision. In addition,

many nearby properties are equal or narrower in width than the Property. The Petitioner's home is presently about the same size as other homes in the area.

The adjacent lot to the south of the Property is a large, wooded open space parcel containing a 100-year floodplain with a stream and wetlands.

6. The Petitioner testified that the proposed addition will have no impact on the neighborhood because his home is at the end of a street and is bordered by an open space lot that will not be developed. He will plant a tree in front of the addition to screen it from other the street and other homes. The Petitioner conceded noted that other lots in the subdivision are small and narrow.<sup>1</sup>

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

1. The standards for variances are contained in Section 130.B.2.a of the Regulations.

That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are

---

<sup>1</sup> The Petitioner alternatively argued that no variance is necessary because Section 110.B.2 permits one "zero lot line dwelling" per lot. A zero lot line dwelling, however, must be located in a zero lot line development and have been designated as such on the subdivision plat. This is not the case here.

made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

For the reasons stated below, I find that the requested variance does not comply with Section 130.B.2.a(1), and therefore must be denied.

2. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thusly:

“In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic *not shared by other properties in the area*, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar

restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.”

*North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Petitioner has not shown that the Property is in any way unique such that the side setback of Section 110.D.4.d(1)(b)(i) will disproportionately impact it. The evidence is undisputed that the Property is equal or larger in size than many other properties in the neighborhood. What’s more, many other properties in the area are as narrow as or narrower than the Property. While the width of the Property is the characteristic that poses a problem in meeting the Petitioner’s desire to expand to the south side of his home, it is by no means unique.

In addition, there appears to be ample room to the rear of the Petitioner’s home on which an addition could be built within the Property’s building envelope. The Petitioner argues that this is not practical because the living room, dining room and kitchen are on the south side of the house. As stated above, however, I may not consider the location of the improvements on the Property or their internal layout as a unique physical condition of the land for the purposes of the variance requirements. Any practical difficulty must relate to the uniqueness of the land itself, and not to the improvements upon it, including the orientation or layout of the home. I must therefore view the Property as if the house had not been built. The reason for this rule is to prevent a property owner from creating a need for a variance.

Consequently, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, he has not shown that the Property itself has any unusual or unique characteristic that necessitates the variance requested. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

Moreover, the Petitioner has not shown that he will experience a “practical difficulty” if the variance is not granted. The Petitioner’s home is already the same size as most in the vicinity. When the side addition is completed, the home will be one of the larger in the area. The grant of the variance would therefore enable him to build an even larger home and gain a benefit not possessed by other homeowners. Consequently, the effect of the side setback cannot be considered unnecessarily burdensome for the purposes of Section 131.B.2.a(1).

### **Conclusion**

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, id. While it may be desirable for the Petitioner to be able to construct an addition on their Property, it must be accomplished within the restrictions of the Zoning Regulations.

It is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of uniform regulations and standards. Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a variance to this Petitioner to accommodate his personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

In this case, the Petitioner argued that, because his Property abuts an undevelopable open space lot, the requested variance will have no detrimental effect on the neighborhood. While this may be true, the impact of the variance is not the only criterion I must consider. Indeed, the Maryland courts have clearly instructed that, if a variance request does not pass the initial “uniqueness” test, “the process stops here and the variance is denied.” *Cromwell*, 651 A.2d at 426

The Petitioner in this case has not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance to the setback requirements. Consequently, I am compelled to deny the request.

**ORDER**

Based upon the foregoing, it is this **16<sup>th</sup> day of May 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Frank J. Kippenbrock for a variance to reduce the 7.5-foot side setback to 1 foot for the construction of an addition in an R-SC (Residential – Single Cluster) Zoning District is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

---

Thomas P. Carbo

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.